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**(1999) 04 BOM CK 0068**

**Bombay High Court**

**Case No:** Writ Petition No. 1784 of 1999

Ceat Limited

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

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**Date of Decision:** April 19, 1999

**Acts Referred:**

- Central Excises and Salt Act, 1944 - Section 35, 35F

**Citation:** (1999) 108 ELT 336

**Hon'ble Judges:** D.G. Deshpande, J; B.P. Saraf, J

**Bench:** Division Bench

**Advocate:** A.M. Setalvad, D.B. Shroff and H.N. Vakil, instructed by Mulla and Mulla, for the Appellant; J.R. Deodhar, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

1. By this writ petition the petitioners seek to challenge the order of the Commissioner of Central Excise and Customs (Appeals) Pune, dated 12-3-1999 (Exhibit "A" to the writ petition) by which the application of the petitioners for dispensation of the requirement of pre-deposit of duty u/s 35F of the Central Excise Act, 1944, has been rejected and the petitioners have been directed to deposit the full amount of disputed duty and penalty on or before 30-3-1999 as a pre-condition for admission of the appeal.

2. The learned Counsel for the parties are agreed that in view of the limited nature of controversy, this writ petition may be disposed of finally at the admission stage itself.

3. Hence rule, returnable forthwith. Respondents, waive service. By consent, writ petition is taken on board for hearing and final disposal.

4. Mr. Setalvad, the learned Counsel for the petitioners submits that the impugned order is most arbitrary and illegal. He submits that the order is a mechanical,

unreasoned order and does not even show any application of mind of the officer whatsoever. He submits that the order has been passed on 12-3-1999 only to coerce the petitioners to deposit the amount before the end of the financial year. Mr. Setalvad submits that this order is liable to be quashed and set aside with costs.

5. Mr. Deodhar, learned Counsel for the respondents, fairly stated that so far as the impugned order is concerned, he cannot defend the same because it is an unreasoned one. He stated that he would like to issue necessary instruction to the respondents to pass reasoned orders in future. He, therefore, stated that in the facts and circumstances of this case, this order may be set aside and the matter may be remanded to the Commissioner (Appeals) for fresh reasoned order.

6. We have carefully considered the rival submissions of both the parties. This is not the first case where we are confronted with an order on application for dispensation of the requirement of pre-deposit u/s 35 of the Central Excise Act, 1944, and stay of the disputed demand pending hearing of the appeal, which is mechanical and without application of mind. During the last six months, we had to set aside a number of such orders for the very same reason. The Commissioners (Appeals) have been directed by this court to apply their mind to the facts and circumstances of the case before passing orders on the application for dispensation of the requirement of pre-deposit and to pass reasoned order. We are constrained to note that despite of such repeated observations, things have not improved.

7. In the facts and circumstances of the case and in view of the fair stance taken by the learned Counsel for the respondents, we set aside the impugned order with a direction to the Commissioner (Appeals) to give a hearing to the petitioners and after considering the submissions of the petitioners and the facts and circumstances of the case, pass a reasoned order.

8. Writ petition disposed of accordingly with no order as to costs.